

## FIRST DIVISION

[ G.R. No. 166391, October 21, 2015 ]

**MICROSOFT CORPORATION, PETITIONER, VS. ROLANDO D. MANANSALA AND/OR MEL MANANSALA, DOING BUSINESS AS DATAMAN TRADING COMPANY AND/OR COMIC ALLEY, RESPONDENT.**

### DECISION

**BERSAMIN, J.:**

This appeal seeks to overturn the decision promulgated on February 27, 2004,<sup>[1]</sup> whereby the Court of Appeals (CA) dismissed the petition for *certiorari* filed by petitioner to annul the orders of the Department of Justice (DOJ) dated March 20, 2000,<sup>[2]</sup> May 15, 2001,<sup>[3]</sup> and January 27, 2003<sup>[4]</sup> dismissing the criminal charge of violation of Section 29 of Presidential Decree No. 49 (*Decree on Intellectual Property*) it had instituted against the respondents; and the resolution promulgated on December 6, 2004 denying its motion for reconsideration.<sup>[5]</sup>

#### Antecedents

The CA summarized the factual and procedural antecedents thusly:

Petitioner (Microsoft Corporation) is the copyright and trademark owner of all rights relating to all versions and editions of Microsoft software (computer programs) such as, but not limited to, MS-DOS (disk operating system), Microsoft Encarta, Microsoft Windows, Microsoft Word, Microsoft Excel, Microsoft Access, Microsoft Works, Microsoft Powerpoint, Microsoft Office, Microsoft Flight Simulator and Microsoft FoxPro, among others, and their user's guide/manuals.

Private Respondent-Rolando Manansala is doing business under the name of DATAMAN TRADING COMPANY and/or COMIC ALLEY with business address at 3<sup>rd</sup> Floor, University Mall Building, Tail Avc, Manila.

Private Respondent Manansala, without authority from petitioner, was engaged in distributing and selling Microsoft computer software programs.

On November 3, 1997, Mr. John Benedict A. Sacriz, a private investigator accompanied by an agent from the National Bureau of Investigation (NBI) was able to purchase six (6) CD-ROMs containing various computer programs belonging to petitioner.

As a result of the test-purchase, the agent from the NBI applied for a search warrant to search the premises of the private respondent.

On November 17, 1997, a Search Warrant was issued against the premises of the private respondent.

On November 19, 1997, the search warrant was served on the private respondent's premises and yielded several illegal copies of Microsoft programs.

Subsequently, petitioner, through Atty. Teodoro Kalaw IV tiled an Affidavit-Complaint in the DOJ based on the results of the search and seizure operation conducted on private respondent's premises.

However, in a Resolution dated March 20, 2000, public respondent State Prosecutor dismissed the charge against private respondent for violation of Section 29 P.D. 49 in this wise, to quote:

'The evidence is extant in the records to show that respondent is selling Microsoft computer software programs bearing the copyrights and trademarks owned by Microsoft Corporation. There is, however, no proof that respondent was the one who really printed or copied the products of complainant for sale in his store.

WHEREFORE, it is hereby, recommended that respondent be charged for violation of Article 189 of the Revised Penal Code. The charge for violation of Section 29 of PD No. 49 is recommended dismissed for lack of evidence.'

Petitioner filed a Motion for Partial Reconsideration arguing that printing or copying is not essential in the crime of copyright infringement under Section 29 of PD No. 49.

On May 15, 2001, the public respondent issued a Resolution denying the Motion for Partial Reconsideration.

Thereafter, petitioner filed a Petition for Review with the DOJ, which denied the petition for review.<sup>[6]</sup>

Dissatisfied with the outcome of its appeal, the petitioner filed its petition for *certiorari* in the CA to annul the DOJ's dismissal of its petition for review on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the DOJ.

On February 27, 2004, the CA rendered the assailed decision affirming the dismissal by the DOJ,<sup>[7]</sup> disposing as follows:

**WHEREFORE**, premises considered, the instant petition is **DENIED**. Consequently, the Orders dated March 20, 2000, May 15, 2001 and January 27, 2003 respectively are hereby **AFFIRMED**.

**SO ORDERED.**<sup>[8]</sup>

The petitioner insists that printing or copying was not essential in the commission of the crime of copyright infringement under Section 29 of Presidential Decree No. 49; hence, contrary to the holding of the DOJ, as upheld by the CA, the mere selling of pirated computer software constituted copyright infringement.<sup>[9]</sup>

### **Ruling of the Court**

The appeal is meritorious.

Although the general rule is that the determination of the existence of probable cause by the public prosecutor is not to be judicially scrutinized because it is an executive function, an exception exists when the determination is tainted with grave abuse of discretion.<sup>[10]</sup> Bearing this in mind, we hold that the DOJ committed grave abuse of discretion in sustaining the public prosecutor's dismissal of the charge of copyright infringement under Section 29 of Presidential Decree No. 49 on the ground of lack of evidence because the public prosecutor thereby flagrantly disregarded the existence of acts sufficient to engender the well-founded belief that the crime of copyright infringement had been committed, and that the respondent was probably guilty thereof.<sup>[11]</sup>

Section 5 of Presidential Decree No. 49 specifically defined copyright as an exclusive right in the following manner:

Section 5. Copyright shall consist in the exclusive right;

(A) To print, reprint, publish, copy, distribute, multiply, sell, and make photographs, photo-engravings, and pictorial illustrations of the works;

(B) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute if it be a model or design;

(C) To exhibit, perform, represent, produce, or reproduce, the work in any manner or by any method whatever for profit or otherwise; it not reproduced in copies for sale, to sell any manuscript or any record whatsoever thereof;

(D) To make any other use or disposition of the work consistent with the laws of the land.

Accordingly, the commission of any of the acts mentioned in Section 5 of Presidential Decree No. 49 without the copyright owner's consent constituted actionable copyright infringement. In *Columbia Pictures, Inc. v. Court of Appeals*,<sup>[12]</sup> the Court has emphatically declared:

Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent

of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright.

The "gravamen of copyright infringement," according to *NBI-Microsoft Corporation v. Hwang*:<sup>[13]</sup>

is not merely the unauthorized manufacturing of intellectual works but rather the unauthorized performance of any of the acts covered by Section 5. Hence, any person who performs any of the acts under Section 5 without obtaining the copyright owners prior consent renders himself civilly and criminally liable for copyright infringement.<sup>[14]</sup>

The CA stated in the assailed decision as follows:

A reading of Section 5 (a) of the Copyright Law shows that the acts enumerated therein are punctuated by commas and the last phrase is conjoined by the words 'and'. Clearly, the same should be interpreted to mean as 'relating to one another' because it is basic in legal hermeneutics that the word 'and' is not meant to separate words but is a conjunction used to denote a 'joinder' or 'union'.

In the book of Noli C. Diaz entitled as STATUTORY CONSTRUCTION, the word 'and' was defined as a 'conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first'. Stated differently, the word 'and' is a conjunction pertinently defined as meaning 'together with', 'joined with', 'along or together with', 'added to or linked to' used to conjoin 'word with word', 'phrase with phrase', 'clause with clause'. The word 'and' does not mean 'or', it is a conjunction used to denote a joinder or union, 'binding together', relating the one to the other.

Hence the key to interpret and understand Section 5 (a) of P.D. 49 is the word 'and'. From the foregoing definitions of the word 'and' it is unmistakable that to hold a person liable under the said provision of law, all the acts enumerated therein must be present and proven. As such, it is not correct to construe the acts enumerated therein as being separate or independent from one another.

In the case at bar, petitioner failed to allege and adduce evidence showing that the private respondent is the one who copied, replicated or reproduced the software programs of the petitioner. In other words, 'sale' alone of pirated copies of Microsoft software programs does not constitute copyright infringement punishable under P.D. 49.<sup>[15]</sup>

The CA erred in its reading and interpretation of Section 5 of Presidential Decree No. 49. Under the rules on syntax, the conjunctive word "and" denotes a "joinder or union" of words, phrases, or clause;<sup>[16]</sup> it is different from the disjunctive word "or" that signals disassociation or independence.<sup>[17]</sup> However, a more important rule of statutory construction dictates that laws should be construed in a manner that avoids absurdity or unreasonableness.<sup>[18]</sup> As the Court pointed out in *Automotive Parts & Equipment Company, Inc. v. Lingad*:<sup>[19]</sup>